

**Letter of Findings: 01-20160064
Indiana Individual Income Tax
For The Tax Year 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual provided documentation to establish he was not required to pay additional income on his Indiana income tax return, because Individual was able to show that he was insolvent at the time his debt was discharged.

ISSUES

I. Indiana Individual Income Tax - Adjusted Gross Income.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; I.R.C. § 108; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the Department's proposed assessment for the 2012 tax year.

II. Tax Administration - Penalty.

Authority: IC § 6-8.1-10-3.

Taxpayer protests the imposition of penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. The Indiana Department of Revenue ("Department") determined that Taxpayer did not correctly report his Indiana income on his 2012 Indiana Income Tax return. The Department therefore issued a proposed assessment for 2012 income tax, penalty, and interest.

Taxpayer protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2012. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Adjusted Gross Income.

DISCUSSION

The Department assessed Taxpayer income tax for the 2012 tax year on the ground that Taxpayer incorrectly reported his income; the income was a result of a discharge of debt. Taxpayer argues that he is not required to report the discharge of debt because he was insolvent at the time the debt was discharged.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; Taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, Taxpayer is required to provide documentation explaining and supporting his challenge that the Department's assessment is wrong.

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. IC §

6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income "as defined by Section 62 of the Internal Revenue Code." Principal amount from a loan that is discharged is normally considered income under both I.R.C. § 61 and IC § 6-3-1-3.5. However, under I.R.C. § 108(a)(B), "Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if . . . the discharge occurs when the taxpayer is insolvent."

During the protest process Taxpayer provided his Federal and Indiana 2012 tax returns. His federal return included Form 982 which is titled "Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)." According to the form's instructions, the purpose of this form is to report the exclusion of the discharged amount and the reduction of certain tax attributes. Taxpayer's filed form shows that he was insolvent and thus properly excluded the discharged amount from his adjusted gross income. The amount he was able to exclude matches the amount the Department assessed in additional income. Taxpayer proved that the amount the Department assessed was properly excluded from his adjusted gross income due to his insolvency. Therefore, Taxpayer has met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained.

II. Tax Administration - Penalty.

DISCUSSION

Taxpayer requests that the Department abate the penalty and interest. Pursuant to IC § 6-8.1-10-3(a), the Department may assess a penalty if the taxpayer "fails to file a return on or before the due date" In addition IC § 6-8.1-10-3 states:

(b) If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20%) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

Taxpayer established that he will not owe the proposed tax assessment, as discussed in Issue I. Taxpayer has been sustained on his protest of the imposition of assessed income tax, therefore, the issue of penalty and interest assessed is moot.

FINDING

Taxpayer's protest of the negligence penalty is sustained.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the Department's proposed assessment for the 2012 tax year is sustained. Taxpayer's protest of the penalty is moot since Taxpayer does not owe any of the proposed assessment.

Posted: 06/29/2016 by Legislative Services Agency
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